SUMMARY ANALYSIS OF AMENDED BILL

Franchise Tax Board

Author: Soto | Analyst: Jeff Garnier | Bill Number: SB 2198

Related Bills: See Prior Analysis | Telephone: 845-5322 | Amended Date: May 8, 2000

Attorney: Patrick Kusiak | Sponsor:

SUBJECT: Homeownership Tax Credit Act of 2000

_____ DEPARTMENT AMENDMENTS ACCEPTED. Amendments reflect suggestions of previous analysis of bill as introduced/amended _________.

_____ AMENDMENTS IMPACT REVENUE. A new revenue estimate is provided.

__X__ AMENDMENTS DID NOT RESOLVE THE DEPARTMENT'S CONCERNS stated in the previous analysis of bill as introduced/amended 3/16/00 and 4/6/00.

__X__ FURTHER AMENDMENTS NECESSARY.

_____ DEPARTMENT POSITION CHANGED TO _________________________.

__X__ REMAINDER OF PREVIOUS ANALYSIS OF BILL AS INTRODUCED/AMENDED April 6, 2000 STILL APPLIES.

_____ OTHER - See comments below.

SUMMARY OF BILL

Under the Bank and Corporation Tax Law (B&CTL), this bill would allow an unspecified "homeownership tax credit" to certain financial corporations for making qualified second mortgage loans. The loans must be made to certain home buyers or to individuals improving their homes under a neighborhood revitalization project. The California Tax Credit Allocation Committee (CTAC) would allocate the credit.

Under certain conditions, this bill would impose a tax on individuals who sold the house that secured the homeownership tax credit loan. The tax would be equal to 50% of the gain from the sale of the home.

SUMMARY OF AMENDMENT

The May 8, 2000, amendments made changes to the definition of "qualified homeownership tax credit loan" and describe a borrower who could accept a qualified homeownership tax credit loan. Also, the methodology on how an individual would be taxed if the home securing the loan were sold under certain circumstances was changed.

Additionally, the amendments include numerous technical changes.

EFFECTIVE DATE

This bill would be effective immediately upon enactment and would apply to taxable or income years beginning on or after January 1, 2001.

Board Position:			Legislative Director	Date
_____ S	_____ NA	_____ NP		
_____ SA	_____ O	_____ NAR	Johnnie Lou Rosas	5/15/00
_____ N	_____ OUA	__X__ PENDING		

SPECIFIC FINDINGS

Expect for items discussed in this analysis, the April 6, 2000, analysis still applies. The department's policy, implementation and technical concerns stated in the April 6, 2000, analysis which have not been affected by the May 8, 2000, amendments are included in this analysis.

The May 8, 2000, amendments affect the following provisions of the bill:

- The servicing fees in connection with the loan, when added to the fees of any other loan secured by the residence, would no longer be limited to 63 basis points or to 38 basis points in the case of a neighborhood revitalization project loan. As long as the servicing fees are allocated from the interest payments, the servicing fees may be any amount.

- The homeownership tax credit loan cannot be amortized for more than 30 years. The California Tax Credit Allocation Committee (CTAC) may set the amortization period below 30 years. Prior to the amendment, the qualified lender or the CTAC could set the amortization period below 30 years.

- The borrower's family income for the year in which the borrower applies for the loan could not exceed 80% of the area's median gross income. Prior to the amendment, the borrower's family income could be up to 100% of the area's median gross income.

- The borrower could not have been on the title to a residential piece of property within three years before the loan application. This provision was not included in the prior version of the bill.

- The bill would require that if a borrower with family income of 115% or more of the area median gross income disposes of the residence to which a homeownership tax credit applies, the borrower's tax shall be increased by 50% of the gain on the disposition of the residence. This rule would not apply to a borrower who meets at least one of the following:

    - The disposition was made more than 10 years after the qualified homeownership tax credit loan was made.
    - The disposition is by reason of death.
    - The purchaser of the residence assumes the homeownership tax credit loan.

  Prior to the amendment, the increase in tax was limited to tax under the Bank and Corporation Tax Law (B&CTL). This change eliminates the reference to the B&CTL, but does not resolve one of the department's implementation concerns, as discussed below.

- The May 8, 2000, amendments also inserted the phase "or appraised value" in three places, which partially resolves one of the departments implementation concerns.

Policy Considerations

Federal law prohibits discriminatory state taxation of interest on federal obligations. This bill provides a credit to banks and financial corporations for interest forgone on loans relating to homeownership loans. This could be interpreted to subject interest on federal obligations to a discriminatory state franchise tax in violation of federal law.

It is possible this bill would allow the credit for purchases of homes located outside of this state.

This bill would allow the taxpayer to carry back the credit to an income year prior to the year the credit was earned. No other credit or deduction under California law is allowed to be carried back.

The tax credit does not contain a sunset date. Recently enacted credits contain sunset dates and generally are provided to allow periodic review by the Legislature.

Implementation Considerations

The major implementation considerations are as follows:

- It is unclear if the CTAC would set the applicable percentage at the beginning of the credit period or would set a new applicable percentage every year.
- It is unclear if the maximum credit the CTAC can allocate every year is for a single taxpayer, the aggregate amount for all taxpayers, or both.
- The terms “taxpayer,” “Secretary,” “reasonable,” “residence,” and “Section 45D” are not clearly defined.
- The phrase “approved allocation plan” are defined but not used.
- It is unclear if any loan would qualify as a neighborhood revitalization project loan because the terms “neighborhood loan revitalization project loan” and “appraised value” do not appear in all instances that they are needed.
- It appears a non-qualified lender could purchase the loan and be entitled to claim the credit for the remainder of the credit period.
- The bill could impose a tax on a taxpayer if the taxpayer disposed of the residence to which a homeownership tax credit applies within 10 years after the loan was made. The tax imposed would be equal to 50% of the gain on the disposal of the residence. It is unclear who the taxpayer is (the borrower or the lender) and how the taxpayer would be taxed (the bill does amend any Personal Income Tax Law section).

Department staff is available to work with the author as the bill proceeds through the Legislature to resolve the concerns.

Technical Considerations

There are numerous technical considerations, including cross referencing errors, that would best be corrected after the implementation considerations are addressed.

FISCAL IMPACT

Departmental Costs

Once the implementation considerations are resolved, this bill should not significantly impact the department's cost.

Tax Revenue Estimate

The revenue estimate is unknown and cannot be determined until the annual amount of credit that can be allocated by the CTAC is stated.

BOARD POSITION

Pending.